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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SAUL HUDSON p/k/a SLASH, an individual, and MICHAEL McKAGAN p/k/a DUFF, an individual, and GUNS N' ROSES, a California General Partnership,

Plaintiffs,

vs.

WILLIAM BAILEY p/k/a W. AXL ROSE, an individual, BLACK FROG MUSIC, a California corporation, KOBALT MUSIC PUBLISHING AMERICA, INC., a Delaware corporation, KOBALT MUSIC SERVICES AMERICA, INC., a Delaware corporation, KOBALT SONGS MUSIC PUBLISHING, a New York company, and DOES 1-10, inclusive.

Defendants.

Case No. CV05-6028 CBM (PLAx)

W. AXL ROSE'S COUNTERCLAIM FOR DECLARATORY RELIEF AND BREACH OF CONTRACT; DEMAND FOR JURY TRIAL

W. AXL ROSE, an individual,

Counterclaimant,

v.

SAUL HUDSON p/k/a SLASH, an individual, and MICHAEL McKAGAN p/k/a DUFF, an individual,

Counterclaim-defendants.

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THE NATURE OF THE COUNTERCLAIM

1. Counterclaimant W. Axl Rose ("Rose") brings this action to confirm his ownership of the copyrights in songs that he co-wrote with his former Guns N' Roses bandmates.

2. Former Guns N' Roses' members Saul "Slash" Hudson ("Hudson") and Michael "Duff" McKagan ("McKagan") have, for many years, waged a vindictive public relations campaign, spreading propaganda, dis-information and outright lies about Rose in a deliberate attempt to smear Rose, undermine his business and alienate him from fans. Among other things, Hudson and McKagan falsely claimed that Rose was responsible for the break-up of Guns N' Roses, and have disparaged Rose's work ethic, commitment to the band's fans and contributions as a songwriter and performer.

3. Hudson and McKagan have also publicly denounced Rose's ownership and right to control famous musical compositions he co-authored, including the huge Guns N' Roses hits "Sweet Child O' Mine," "Welcome To The Jungle," "Paradise City" and "November Rain." In fact, Hudson and McKagan went so far as to sue Rose for infringing the copyrights in the songs that he co-wrote!

4. The lawsuit Hudson and McKagan filed was based on a faulty premise and was ill-advised from the start. What Hudson and McKagan attempted to portray as egregious misconduct by Rose was in fact -- as Hudson and McKagan have now admitted -- nothing more than a clerical error committed by ASCAP. Had Hudson and McKagan or their representatives bothered to pick up the phone and call, the clerical error could have been easily sorted out without the need for an utterly baseless lawsuit.

5. Hudson and McKagan's vindictive attempt to aggrandize their own stature and re-write history through false media statements attacking Rose stands in

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sharp contrast to Rose's conduct. Unlike his former band mates, Rose has at all times worked diligently to maintain the artistic integrity of the band, refusing to license Guns N' Roses songs to potentially embarrassing projects, fighting to avoid the release of material that does not live up to Rose's standards and those of the bands fans, and choosing to take the high road in the face of Hudson and McKagan's attacks. Hudson and McKagan, by contrast, have told ever changing -- and false -- stories regarding the formation of the band. Hudson, in an effort to disparage Rose and alienate Rose's fans, also made false accusations regarding the type of music Rose wanted to record. (Hudson falsely claimed Rose wanted to make a "techno industrial, Nine Inch Nails, Pearl Jam" record.)

6. There is and can be no doubt that Rose owns and controls his share of the Guns N' Roses compositions. In 1994, Rose, Hudson and McKagan signed a written co-administration agreement which clearly and unequivocally states that each of the individual band members owns, and is entitled to administer, his share of the copyrights in the songs which they wrote together.

7. Rose's ownership and right to control his own musical works was again affirmed by the opinion of a "pre-litigation" expert McKagan hired to assist in making other claims against Rose.

8. On May 19, 2003, Robert E. Gordon, a Sausalito based attorney who describes himself as having 40 plus years experience in the music industry and claims to have represented "many record companies, music publishers, major 'rock and roll' artists, personal managers and agents, sent a letter to Glendon W. Miskel, McKagan's counsel of record herein, clearly and unequivocally opining that Rose owns and has the right to control his copyrights. Gordon stated:

> "***It is clear that each party maintains title to his share of the copyright in each song.*** . . . Except for the restrictions of paragraph 3 of [the Co-Administration Agreement], ***each of the parties to this Agreement has***

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the right to administer his respective share during the full term of the worldwide copyright . . . (Emphasis added.)

9. Notwithstanding this opinion from their own "expert," Hudson and McKagan have persisted in making false claims against Rose in order to create publicity for themselves and once again, undermine Rose's business. Enough is enough. Musicians confident in their talent should be able to leave a band without attacking their former bandmates or the band's legacy. Hudson and McKagan have taken the exact opposite approach, choosing instead to attempt to label Rose in the media as a negative dictator. Hudson and McKagan have also falsely accused Rose of being responsible for the break-up of Guns N' Roses and of coercing them into signing over rights to the Guns N' Roses name by refusing to go on stage (which is a complete fabrication and never happened), among other things. Contrary to his own false accusations, it was Hudson who refused to cooperate in replacing band members that he himself maneuvered out of Guns N' Roses because of his own insecurities, egotism and jealousies regarding his songwriting abilities and musicianship. It was also Hudson who attempted to manipulate public perceptions to aggrandize his own position by changing the musical course of the band away from the style expressed in the hugely successful album "Appetite For Destruction" (which did not include any songs, melodies, lyrics or initial ideas generated by Hudson) to songs which Hudson created, regardless of their artistic quality or commercial appeal.

10. Now that Hudson and McKagan are no longer in Guns N' Roses, they are acting as though their careers depend on strip-mining the band's catalogue and attacking its lead singer in the media. Making a new record with a new band is one thing; attempting to sabotage a former band's relationship with its fans in order to promote a new venture is simply wrong.

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11. As the band's founder and owner of the exclusive right to record and perform under the Guns N' Roses name, Rose has worked diligently to maintain the artistic integrity and legacy of the band. The ongoing, baseless, vindictive and wholly unjustified efforts by Hudson and McKagan to denigrate Rose, his contributions and commitment to Guns N' Roses must be stopped. A declaratory judgment should issue affirming Rose's ownership and right to control his artistic works.

THE PARTIES

12. Rose is an individual residing in the County of Los Angeles, State of California.

13. Counterclaim defendant Saul Hudson is a musician professionally known as "Slash" who resides in the County of Los Angeles, State of California.

14. Counterclaim defendant Michael McKagan is a musician professionally known as "Duff" who resides in Seattle, Washington, but conducts business in the County of Los Angeles, State of California.

15. For many years, Rose, Hudson and McKagan performed and achieved great success together as the world famous musical group Guns N' Roses. At various points in time, Jeffrey Isbell professionally known as Izzy Stradlin ("Stradlin") and Steven "Popcorn" Adler ("Popcorn") were also members of the band.

JURISDICTION

16. This Court has jurisdiction over this Counterclaim pursuant to 17 U.S.C. §§ 101 et seq., and 28 U.S.C. §§ 1331, 1338 and 1367.

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17. Venue in this District is appropriate because all of the Counterclaim Defendants reside and/or transact business, or may otherwise be found in the Central District, and because a substantial part of the events and omissions giving rise to Rose's claims occurred there.

FIRST COUNTERCLAIM
FOR DECLARATORY RELIEF

18. Rose hereby realleges and incorporates by references paragraphs 1 through 17 above as though set forth in full hereat.

19. During their collaboration, Rose, Hudson, McKagan and Stradlin co-wrote numerous musical compositions, including the huge Guns N' Roses hits "Sweet Child O' Mine," "Welcome To The Jungle," "Paradise City" and "November Rain" (the "Compositions").

20. As a co-author of the Compositions, Rose is a joint owner of the copyrights therein. Rose never executed a written assignment of his copyright interests in the Compositions to Guns N' Roses Music, Hudson, McKagan or any Guns N' Roses partnership.

21. In or about April 1994, Rose, Hudson, McKagan and Stradlin entered into a written settlement agreement and mutual release (the "Settlement Agreement") to resolve disputes that arose between them after Stradlin left the band, and to establish protocols for the future exploitation of the Compositions.

22. At the same time, Rose, Hudson, McKagan and Stradlin, and their respective publishing company designees, entered into a written Co-Administration Agreement (the "Co-Administration Agreement"), which was attached to the Settlement Agreement as Exhibit "F."

23. The Co-Administration Agreement contains an express recital affirming the parties' intent that "the entire worldwide right, title and interest,

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including the copyright, the right to the copyright and the renewal right in and to the Compositions" shall be jointly owned by Rose, Hudson, McKagan and Stradlin's respective publishing companies in agreed upon percentages set forth on a written schedule.

24. The Co-Administration Agreement also contains an express recital affirming the parties' "desire that each of them shall administer its respective interest in the Compositions upon all the terms and conditions contained herein."

25. Consistent with the recitals, the parties expressly agreed in the Co-Administration Agreement that:

> "The Publishing Companies, [defined as Rose's, Hudson's, McKagan's and Stradlin's respective publishing companies] shall jointly own the Compositions, in the shares above described, including all of the worldwide right, title and interest, including the copyright, the right to copyright and the renewal right therein and thereto" (Co-Administration Agreement, p. 2, ¶ 1)

and that:

> ***"The parties hereto shall each have the right to administer their respective right in and to the Compositions throughout the world during the full term of the worldwide copyright, including renewals,*** but only in accordance with all the terms and conditions of this agreement. The parties hereto shall each have the right, throughout the world, to enter into any and all non-exclusive licenses and agreements with respect to the exploitation of mechanical reproduction rights and

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performing rights (subject to Paragraphs 4 and 5 hereof) as to their respective interests in the Compositions. . . ." Co-Administration Agreement, p. 2, ¶ 3 (emphasis added).

26. The Co-Administration Agreement provides that it "cannot be changed, modified or canceled except by an instrument signed by the party sought to be bound." Rose is informed and believes, and based thereon alleges, that there is no signed instrument canceling or modifying the Co-Administration Agreement.

27. Notwithstanding the unequivocal language of the Co-Administration Agreement, Hudson and McKagan have taken the wholly unjustified position that Rose does not own and has no right to administer his share of the copyrights in the Compositions. Indeed, Hudson and McKagan have gone so far as to sue Rose for allegedly infringing the copyrights in the Compositions.

28. An actual controversy now exists between Rose, Hudson and McKagan wherein Rose contends that he owns and has the right to administer his share of the copyrights in the Compositions and Hudson and McKagan contend to the contrary.

29. A judicial declaration is necessary and appropriate so that the parties may ascertain and know their rights with respect to the ownership and administration of the copyrights in the Compositions.

SECOND COUNTERCLAIM

FOR BREACH OF CONTRACT

30. Rose hereby realleges and incorporates by references paragraphs 1 through 27 above as though set forth in full hereat.

31. Although Rose never executed a written assignment of his ownership interests in the copyrights to the Guns N' Roses Compositions to Guns N' Roses Music, copyright registrations for the Compositions were erroneously filed in the

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United States Copyright office identifying Guns N' Roses Music as the copyright owner.

32. Rose is informed and believes, and based thereon alleges, that Guns N' Roses Music is not a legal entity, but is a name or "dba" under which Rose, Hudson, McKagan, Stradlin and Popcorn as individuals from time to time did business.

33. The Co-Administration Agreement expressly provides that the copyright registrations filed in the United States Copyright office in the name of Guns N' Roses Music "shall be assigned" to each of the band members' respective publishing companies in the shares set forth in the Co-Administration Agreement.

34. Paragraph 2 of the Co-Administration Agreement provides:

> "Inasmuch as the Compositions have heretofore been registered for copyright, the parties shall simultaneously herewith cause to be delivered such assignments of the appropriate interest in the copyright (i.e., title as shown in the records of the Copyright Office of the United States of America) with the percentages referred to hereinabove."

35. Pursuant to paragraph 14 of the Co-Administration Agreement, the parties agreed to "execute any further documents including, without limitation, assignments of copyrights, and do all acts necessary to fully effectuate the terms and provisions of [the] agreement."

36. Rose has performed all obligations required of him under the Co-Administration Agreement, except as may have been excused by the counterclaim defendants' material breaches.

37. Hudson and McKagan breached and repudiated the Co-Administration Agreement by suing Rose for copyright infringement and by

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publicly claiming that Rose does not own and has no right to control the administration of his musical works.

38. As a result of Hudson and McKagan's material breaches, Rose has suffered damages in an amount not presently ascertained, but which exceeds the jurisdictional limit of this Court.

WHEREFORE, Rose prays for:

1. A declaration affirming that he owns and has the right to administer his share of the copyrights in the Compositions;

2. For compensatory damages in an amount to be proven at trial;

3. For costs of suit herein, including reasonable attorneys' fees; and

4. For such other and further relief as the Court deems just and proper.

DATED: March 1, 2006

Respectfully Submitted,

GREENBERG GLUSKER FIELDS CLAMAN MACHTINGER & KINSELLA LLP

By: _____
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W. AXL ROSE

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DEMAND FOR JURY TRIAL

Pursuant to the Seventh Amendment of the United States Constitution and Federal Rule of Civil Procedure 38(b), Counterclaimant W. Axl Rose hereby demand a trial by jury of all issues so triable.

DATED: March 1, 2006

Respectfully Submitted,

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